IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

Crl.MC.No. 1773 of 2007()

CRL.R.P.405/04 DT.16.3.06
C.C.183/98 ON THE FILE OF J.F.C.M. COURT , KOTTAYAM

PETITIONER: ACCUSED

C.S.MDHUSOODANAN, CHANDRAVILASOM,
CHIRAKKADAVU, PONKUNNAM, KOTTYAM DISTRICT.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:
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1. E.D.ANTONY, S/O.DOMINIC,
ELLUKUNNEL HOUSE, KANJIRAPALLY.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1773 of 2007

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Dated this the 1st day of June, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The verdict of guilty, conviction and sentence have now become final with the disposal of the revision. The petitioner has to undergo imprisonment till rising of court and to pay an amount of Rs.2,10,000/- as compensation. The petitioner has not appeared before the learned Magistrate so far. The petitioner submits that he is willing to appear before the learned Magistrate. According to him, he has a grievance that he has already paid Rs.2,10,000/- to the complainant and has obtained Annex. II series receipts. He having made the payment of Rs.2,10,000/-, he is not liable to undergo any further imprisonment for default, as held in **Girish** v. **Muthoot Capital Services (P) Ltd**. (2007 (1) KLT 16).

2. The petitioner must appear before the learned Magistrate along with the complainant and satisfy the learned Magistrate that payment has been made. But the petitioner submits that the

complainant will not come before the court to confirm that the payment has been made. He therefore wants notice to be issued to the complainant and an enquiry to be conducted whether payment has been effected as shown in Annex.II. I am certainly of the opinion that such further protraction of the proceedings cannot be permitted. If the payment due under an order of the court were made, certainly the petitioner must have insisted that the parties file an appropriate joint statement duly counter signed by counsel to the satisfaction of the court. In every such case it will be inexpedient to permit the accused to raise such a contention that payment has been made when such payment is disputed or not confirmed by the other side.

3. This Crl.M.C. is dismissed. However, I may hasten to observe that the petitioner can still avoid the default sentence if he satisfies the learned Magistrate by filing appropriate joint statement with the complainant that the payment has been made. If the complainant does not agree for the same, I should think that the only alternative remedy of the petitioner is to sue for recovery of the amount, which is alleged to be paid as per Annex.II series receipts.

(R. BASANT)
Judge

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